NATIONAL SEMINAR ON PROFESSIONAL LIABILITY
October 29 - November 1st, 1986
Vancouver, B. C.

VERDICT OF THE JURY ON QUESTIONS 1 TO 6

CANADIAN INSTITUTE FOR THE ADMINISTRATION OF JUSTICE

MEMBERS OF THE JURY

Mr. Richard C. Bryan, (FOREMAN)
Manager, Economics, Statistics and Energy,
Council of Forest Industries of British Columbia.

Mr. Ian Bell, C.A.,
Chartered Accountant and Businessman.

Miss Sherry Longstaffe,
Recent B.Comm. Graduate from U.B.C.

Mr. Clay Perry,
Legislative Director,
I.W.A. Western Canadian Regional Council No. 1.

Mrs. Patsy Preston,
Housewife, Registered Nurse and Hospital Trustee.

Mrs. Audry Sojonky,
President of Small Computer Software Development Company,
Former Executive Director, Educational Research Institute of B.C.

Mr. Larry Still,
Journalist, Vancouver Sun.

Mr. Mike Walker,
Manager, Housing and Hospital Planning,
Greater Vancouver Regional District.

Mr. Chairman, Ladies & Gentlemen,

This has been quite an experience -- I am rapidly developing a keen appreciation for something called reserving judgment. However, on behalf of the jury I want to thank the organizers of this seminar for offering a group of lay persons a rare opportunity to hear some stars and superstars of your profession and others debate serious questions and give us an opportunity to think about them as well.

At lunch yesterday I was thinking about the decision-making process in general and how it applied to judges and juries, among others, and was reminded of a story about three baseball umpires. They were being interviewed regarding the criteria they used in making their calls. When asked, the first umpire said "I call them as I see them". The second said that he called them as they were. The third umpire, who hadn't been paying much attention to the proceedings up to this point, focused on the interviewer and said "They ain't nothing till I calls them".

Now to the questions.

#1 Resolved that details of insurance should be admissable in damage actions.

The jury found that it should not be admissable by a seven to one majority.

The majority view was that a knowledge of the details of insurance was not relevant to the task of apportioning liability and determining appropriate damages.

The juror holding the minority view, however, did so on the basis of unlimited confidence in the capacity of jurors to distinguish between proper and improper swaying, and a conviction that intelligent and just findings in some damage cases requires knowledge of the financial circumstances of the defendant.

#2 Is the present exposure to professional liability in health care cases contrary to good medical care?

Despite the spellbinding oratory of Mr. Oliver, the jury was unanimous for the affirmative.

The decision reflects juror concerns about physicians running scared and a view that aggressive litigation against physicians will not likely be effective in weeding out more of the relatively few incompetents.

The affirmative answer does not imply that physicians should be free of negligence suits.

We found Dr. O'Brien-Bell's presentation to be, in the words of one juror, a "tour de force" - that made him one of the best "lawyers" in the crowd.

#3 Have the courts gone too far in attaching liability to lawyers?

We were unanimous in thinking NOT.

In our view, lawyers cannot nor should not command respect unless they are submitted to at least the same scrutiny by the courts as they expect other groups to be.

In fact, we were given no cases where the judgments seemed excessive.

Here, although Mr. Crane carried the day, we felt that Ms. Stewart gave lawyers a better defence than they probably deserve.

#4 On the revised question of should damages for professional liability be limited -

We were unanimous for the negative.

The jury felt that inasmuch as every defendant and every resolution is entitled to the services of a lawyer -- and whereas Professor Joe Smith, arguing the affirmative, has neglected his duty -- he is found to have been grossly negligent and therefore has unlimited liability and uncapped damages assessed against him.

Counsel arguing the negative, Mr. Justice Linden, is found guilty of less negligence but more obfuscation and therefore carries limited liability and damages capped at 50 cents.

#5 Is the present state of law relating to the liability of accountants in the public interest?

The jury was unanimous in finding for the affirmative. However, we found ourselves with little sympathy for speculative investors who incur losses and then look for someone to sue.

Mr. Giles gave us the most help with this question.

We all agreed with Dr. Walker that caveat emptor should apply to automobile purchases but he didn't take us much further regarding the question at hand.

I think I now understand a little better why those of us who are economists don't bother with liability insurance. Unfortunately, it may be that the public is so skeptical of our pronouncements that anyone attempting to sue us would be laughed out of court.

#6 Are contingency fees in the public interest?

We voted six to two for the affirmative.

Key views by the majority included retaining freedom of contract and that a contingency contract affords individuals an avenue into court which does not involve public funds.

The three presentations here provided the most assistance to the jury on this very difficult question.